



SUMMARY ANALYSIS OF THE “D-INSURANCE PLAN” ©

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In an effort to address the excessively high auto insurance rates that insurers charge Detroiters, the Mayor of Detroit recently issued the “D-Insurance” proposal. This proposal asks the Michigan legislature to pass a law that would give Detroiters the option of purchasing a unique type of auto no-fault insurance policy that is not available to any other citizens of Michigan. This type of policy is referred to as a “Qualified No-Fault Policy.”

These policies contain drastic limitations in coverage and benefits than are presently available under a traditional Michigan no-fault insurance policy. In this regard, the Mayor’s proposal essentially carves out Michigan’s most populated city from Michigan’s compulsory auto no-fault insurance system. As explained below, the D-Insurance proposal will result in Detroiters having second-class auto insurance as compared to the rest of Michigan citizens. Furthermore, the D-Insurance will have significant statewide consequences.

A. PROPOSAL CONTENT

- (1) *Coverage for critical care capped at \$250,000 for families*—under a Qualified No-Fault Policy, an insurer is not liable to pay more than \$250,000 for expenses incurred for critical care, regardless of the severity of the person’s injuries. Moreover, this a combined cap that applies to the critical care rendered to an injured person, the person's spouse, and a relative living the same household who is injured in same motor vehicle accident.
- (2) *Unclear definition of “critical care”*—under the current proposal, “critical care” is unclearly defined and is based upon determining when a person can be “safely” discharged or transferred. Specifically, the plan defines critical care as: “[T]reatment rendered at an acute care hospital or trauma center immediately following the motor vehicle accident, necessary to save the patient's life or treat life threatening or permanently disabling injuries, until the patient is stabilized. A patient is stabilized when the patient can safely be discharged or transferred to another acute care hospital or

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trauma center, rehabilitation or other facility, regardless of whether the patient is, in fact, discharged or transferred at that time."

- (3) *Insurance companies decide whether care is critical/life-stabilizing*—the proposal specifically states: "A Qualifying Insurer shall have the right to contest the charges of an acute-care facility under this section to the extent the Insurer can present competent evidence showing that the facility's charges relate to post-stabilization services."
- (4) *All other no-fault benefits capped at a combined maximum of \$25,000*—under the proposal, all other no-fault benefits are subject to a combined maximum cap of \$25,000. This includes all other non-critical medical treatment, replacement services, and work loss benefits. Moreover, this is a combined cap that applies to the no-fault benefits rendered to an injured person, the person's spouse, and a relative living in the same household who is injured in same motor vehicle accident.
- (5) *Insurance companies can require pre-authorization for medical treatment* – under the proposal, a Qualifying Insurer may require an insured to obtain pre-authorization for products, treatment, services, accommodations, or rehabilitative or occupational therapy. The proposal further states that pre-authorization shall be granted only if there is "medical necessity." Moreover, the proposal states that the failure to obtain written pre- authorization shall render any claim null and void.
- (6) *Prohibits benefits from the Michigan Catastrophic Claims Association*—the proposal specifically prohibits any person insured under a Qualified No-Fault Policy from pursuing no-fault benefits through the Michigan Catastrophic Claims Association.
- (7) *Insurance companies can create their own provider networks*—the proposal specifically allows insurance companies to create their own closed provider networks through which people insured under Qualified No-Fault Policies must seek treatment. If a person does not seek treatment through these insurance company provider networks, then the insurance company can refuse to pay for any portion of the person's treatment.
- (8) *Eliminating medical providers' right to sue insurance companies* – the proposal specifically prohibits any medical provider from bringing its own direct cause of action against an insurance company if the provider does not receive payments from the insurance company for the services the provider renders to a person insured under a qualified insurance plan.

- (9) *Confusion over liability by the at-fault driver for excess medical expenses* – the current version of the D-Insurance proposal does not attempt to amend the tort liability section of the Michigan No-Fault Act. However, under the current language of that section, there is an argument that any person insured under a Qualified No-Fault Policy can recover from the at-fault driver any damages not covered under that policy. If this is the case, when an at-fault driver injures a person insured under a Qualified No-Fault Policy, the at-fault driver will be liable for a far greater amount of damages than when the injured person is covered under a traditional auto no-fault policy.
- (10) *Potential inability to recover excess medical expenses from the at-fault driver* – as stated above, there is an argument that any person insured under a Qualified No-Fault Policy can pursue a claim against the at-fault driver for any damages not covered under that policy. However, this argument has never been tested in court. If this argument is not successful, then this proposal means that Detroiters insured under a Qualified No-Fault Policy who are seriously injured by a negligent driver will be unable to recover any medical expenses in excess of those available under a Qualified No-Fault Policy.
- (11) *No guaranteed premium reduction* – although Qualified No-Fault Policies impose drastic limitations in coverage and benefits, there is nothing in this proposal that guarantees that these policies will be sold at a reduced rate compared to regular no-fault policies. Moreover, there is nothing in the proposal that requires insurance companies to control the rate of premium increases in the future.
- (12) *Expansion of proposal to other cities*– While the D-Insurance Proposal is intended to apply to Detroit, the proposal is not written that way. Rather, under the proposal, Qualified No-Fault Policies must be sold to residents of any city where more than 50% of their drivers are uninsured. Therefore, this law could lead to these policies being sold in other Michigan cities. In addition, because this proposal mandates no premium controls, there is nothing preventing auto insurers from increasing their rates in other cities to create more uninsured drivers, so they can sell Qualified No-Fault Policies in cities other than Detroit.

B. CONSEQUENCES FOR DETROITERS

- (1) *Detroiters forced to go without necessary medical and rehabilitative treatment*--the caps on coverage under Qualified No-Fault Policies will force Detroiters insured under these policies to go without necessary and rehabilitative treatment for injuries sustained in auto accidents.
- (2) *Detroiters forced into medical bankruptcy due to auto accidents*--the caps on coverage under Qualified No-Fault Policies will lead to medical bankruptcy under two different scenarios. First, medical bankruptcy can result from the life-stabilizing phase of the person's treatment. If the person requires more than \$250,000 of medical treatment to save his life, then the cost of that treatment in excess of \$250,000 will be the person's own liability. If the person's life can be stabilized without exceeding the \$250,000 cap, the person will then face possible medical bankruptcy as he or she attempts to receive necessary medical care over and above the \$25,000 cap that applies to all non-critical medical treatment.
- (3) *Detroiters lose the right to choose their own medical providers*--since the proposal allows insurance companies to create their own provider networks, Detroiters insured under Qualified No-Fault Policies will no longer be able to choose who cares for them after an auto accident.
- (4) *Financial burdens on emergency medical providers*--emergency medical providers will not know whether their treatment is for "critical care" (and thus subject to the \$250,000 cap), versus non-critical care (and thus subject to the \$25,000 cap). Furthermore, insurance companies will likely "Monday-morning quarterback" those decisions. Ultimately, emergency medical centers will be forced to render care at the risk they will not be paid for those services.
- (5) *Insurance discrimination against Detroiters*--the proposal will lead to various forms of insurance discrimination against Detroiters. For example, if a 7-year-old Detroit child whose parents bought a Qualified No-Fault Policy is catastrophically injured when hit by a car while playing in the yard, that child will not have any medical coverage beyond the caps that apply to Qualified No-Fault Policies. On the other hand, if a 7-year-old child from Royal Oak is injured in the same way, that child will be able to claim no-fault benefits for life. This is just one of many examples of insurance discrimination that will arise if this proposal becomes law.
- (6) *Detroiters injured by negligent drivers may be unable recover medical expenses* - there is a legal argument that Detroiters insured under these plans who are seriously injured by a negligent driver will not be able to recover any compensation for their medical expenses beyond the limited coverage under a Qualified No-Fault Policy. In other words, the innocent Detroit child who is

paralyzed by a drunk driver may not be able recover any post-acute medical expenses in excess of \$25,000.

- (7) *Job losses and lower tax revenue*—the drastic limitations in coverage and benefits available under Qualified No-Fault Policies will result in metro Detroit medical providers who treat auto accident injuries to either reduce their business operations or close down altogether. If that happens, a substantial number of Michigan citizens will lose their jobs, which will lower tax revenues for State and Local governments.

C. STATEWIDE CONSEQUENCES

- (1) *Substantial Burdens for Michigan Medicaid* - the limited coverage available under Qualified No-Fault Policies will inevitably result in Detroiters injured in auto accidents pursuing medical treatment through Michigan's Medicaid system. This is especially true for auto accident victims who sustain severe injuries requiring life-long treatment. In this regard, the D-Insurance proposal is essentially a cost-shift from private insurance to government-based health insurance. Michigan taxpayers will ultimately pay for this cost shift.
- (2) *Increased liability risks for all Michigan motorists* —under the current No-Fault Law, at-fault drivers are not liable for an injured person's medical expenses. This proposal, however, could change that. It may mean that any at-fault driver injuring a person covered under a Qualified No-Fault Policy is personally liable for the injured person's medical expenses not covered by a Qualified No-Fault Policy. These liabilities could be exorbitant.
- (3) *Increased liability insurance premiums*— the uncertainty over other drivers' liability may have ripple effects in the Michigan auto insurance market. Since it is possible for any Michigan driver (especially those who travel to Detroit for work or leisure) to be involved in an accident with a Detroit resident insured under a Qualified No-Fault Policy, all Michigan residents will need to increase their liability insurance coverage to protect themselves against this new liability exposure. This will likely result in increased premiums for liability insurance.
- (4) *Uncertainty for all Michigan hospitals*—the proposal will cause all Michigan hospitals to question whether they are providing treatment to a Detroit resident who could be covered under a Qualified No-Fault Policy. In this regard, if a Detroit resident traveling outside the city is involved in an auto accident, the hospital treating that person faces the possibility that the person is not covered under a regular no-fault policy. This will result in either the person not receiving the necessary treatment, or the hospital not receiving payment for the treatment that it renders in excess of the medical coverage caps contained within a Qualified No-Fault Insurance Policy.

- (5) *Constitutional challenges*—the D-Insurance proposal will likely be subjected to various constitutional attacks. These arguments will be based on principles of due process and equal protection. Therefore, in the event that this proposal is enacted into law, it will likely face legal challenges that could result in it being overturned altogether. Moreover, these legal challenges will cause instability and confusion within the entire no-fault system, which will further undermine the system's goal of providing prompt payment of benefits to those injured in auto accidents.

- (6) *The eventual destruction of the Michigan no-fault system*— although the D-Insurance proposal purports to apply only to Detroit, the fundamental and drastic ways in which it changes auto insurance will likely cause instability throughout the Michigan no-fault insurance system. Furthermore, it should be anticipated that once these policies become available in Detroit, there will be attempts to make these policies available in other cities as well. Therefore, it would be irrational for those who support preserving the Michigan no-fault insurance system to also support the D-Insurance proposal.